

U.S. DISTRICT COURT
EASTERN DISTRICT COURT
DAVID J. MALAND, CLERK

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA)	No. 4:09-CR-161
<i>Plaintiff,</i>)	4:10-CR-047
)	JUDGE FOLSOM
V.)	
)	
CLOVIS PRINCE)	
<i>Defendant.</i>)	

MOTION TO DISMISS COUNTS IN INDICTMENT

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE DAVID FOLSOM:

The Defendant, Clovis Prince files with the Court his Motion To Dismiss Counts In Indictment, and argues as follows:

COUNTS THAT ARE DUPTICITOUS AND MULTIPLICITY

In the Superseding Indictment in Case No. 4:10-CR-047, Counts 1-7, 13, 20, are multiplicity in charging of single offense in several counts, as to the Defendant's statement of not being a beneficiary to the trust. Counts 8-13, are multiplicity in charging of single offense in several counts, as to the transfer of property, and Defendant is not a beneficiary of trust. Counts 15-17, are multiplicity in charging of single offense in several counts, as to submission of financial statements. See, Gerberding v. United States, 471 F. 2d 55 (8th Cir. 1973); United States v. Hairrell, 521 F. 2d 1264, 1266, (8TH Cir. 1975) cert. denied, 423 U.S. 1035, 96 S. Ct. 568, 46 L. Ed 2d 409 (1975); United States v. Wilson, 565 F. Supp. 1416 (S.D.N.Y. 1983).

Counts 19, 21-23 are duplicity counts, as the indictment is invalidly duplicitous when it joined in a simple count two or more distinct, separate offenses, under the superfluous of a different statute. The burden of the evidence is the same. United States v. Vario, 1989, U.S. Dist. LEXIS 19128 (May 3, E.D.N.Y. 1989).

CONCLUSION

The Defendant respectfully request of the Court to dismiss the counts in the indictment that are duplicitous and multiplicity in the charged offense action.

Respectfully submitted,
/S/ Clovis L. Prince

Clovis L. Prince
Fannin County Jail
2389 Silo Road
Bonham, Texas 75418

Defendant

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was mailed pursuant to Federal Rules of Criminal Procedure on this day November 13, 2010 to the following:

Randall Blake
Assistant United States Attorney
1800 Teague Drive, Suite 500
Sherman, Texas 75090

/s/ Clovis L. Prince

Clovis L. Prince